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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Ralph Wiedemann
Serial No.: 10/505,565
Filed: August 24, 2004
Examiner: Lorna M. Douyon
Art Group: 1796
Title: CONTAINER

MAIL STOP APPEAL BRIEF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 30, 2010

**APPELLANTS' BRIEF ON APPEAL PURSUANT TO
37 CFR § 41.37**

SIR:

This is an appeal from the final rejection of claims 1, 5-9 and 15 of the present application.

(1) REAL PARTY IN INTEREST

The real party in interest is Reckitt Benckiser N.V. by virtue of an assignment recorded in the United States Patent and Trademark Office on January 3, 2005, at Reel 015516, Frame 0412.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(3) STATUS OF CLAIMS

The original filed application included original claims 1-9, of which claims 3-6 and 8-9 were amended and claims 10-14 were added in a preliminary amendment dated August 24, 2004. In response to a first Office Action, claims 1, 8 and 9 were amended, and claims 2 and 10-14 were cancelled in the submission dated September 26, 2006. The Examiner issued a Final Office Action on December 5, 2006, whereupon the applicants filed a response and request for continued examination (RCE) on June 4, 2007 amending claims 1, 8 and 9, and adding new claim 15. The Examiner then issued first Office Action after the RCE dated June 29, 2007. The applicants responded on September 27, 2007 by amended claims 1, 6, 7 and 15. In response to a Final Office Action, the applicants amended claim 1 and filed a second RCE on August 19, 2008. The Examiner then issued a non-final Office Action dated December 11, 2008. The applicants responded by amending claim 1 and cancelling claims 3 and 4 in their June 11, 2009 response. The Examiner issued yet another Final Office Action on September 11, 2009, to which the applicants responded with a third RCE and response. The

claims were not amended in this response. After a non-final Office Action after the third RCE, the applicants then filed a Notice of Appeal on June 30, 2010. Claims 1, 5-9 and 15 are pending and currently stand rejected. This is an appeal of the rejection of those claims.

(4) STATUS OF AMENDMENTS

In response to the Final Office Action dated March 3, 2010, the Appellants filed a Notice of Appeal. There are no unentered or pending amendments to these claims.

(5) SUMMARY OF THE CLAIMED SUBJECT MATTER

There is one independent claim, viz., claim 1.

Claim 1 is directed to a packaged detergent composition comprising a container that at least partly disintegrates in an aqueous environment, the detergent composition consisting of at least one liquid having an outer surface and one solid substantially insoluble in the liquid and having a size sufficient to be retained by a 2.5 mm meshing. (page 1, lines 6-12). The one solid is selected from the group consisting of enzymes, bleach, bleach activators and non-ionic surfactants, (page 3, lines 22-23; page 17, lines 8-12; page 24, lines 5-20) and has a density lower than the density of the liquid wherein the one solid is floating on the outer surface of at least one liquid (page 4, lines 1-5). The liquid has a dispersion/dissolution time of more than 30 s and a viscosity of at least 100 mPa/s. (page 5, lines 21-27).

Claims 5-9 and 15 depend either directly or indirectly from claim 1.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. The rejection of claims 1, 5-9 and 15 under 35 U.S.C. §103(a) as obvious over Becks et al. (WO 02/057402);
- II. The rejection of claim 1 and 5-8 under 35 U.S.C. §103(a) as obvious over Pfeiffer et al. (US 6,492,312); and
- III. The rejection of claim 9 under 35 U.S.C. §103(a) as obvious over Pfeiffer et al. in view of Dasque et al. (WO 01/60966).

(7) ARGUMENT

I. REJECTION OF CLAIMS 1, 5-9 and 15 UNDER 35 U.S.C. §103(a) AS OBVIOUS OVER BECKS ET AL.

The appellants respectfully submit that the Examiner erred in rejecting claims 1, 5-9 and 15 under 35 U.S.C. §103(a) as obvious over Becks et al. (WO 02/057402).

A. The inventors surprisingly discovered that certain properties of the presently claimed invention lead to an unexpected synergy that could not have been predicted from the teachings of Becks.

The presently claimed invention requires that the liquid has a dispersion/dissolution time of more than 30 seconds and a viscosity of at least 100 MPa.s. Becks fails to teach or suggest a composition with the properties of the liquid of the presently claimed invention.

While Becks generally teaches that viscosity can be modified, there is nothing in Becks that would suggest to a skilled artisan to formulate a composition having the

claimed viscosity, and the Examiner's suggestion to do so is based on impermissible hindsight analysis. Indeed, the present inventors discovered that the optimum viscosity is at least 100 MPa.s, which is not simply a routine optimization, but rather an inventive aspect that allows the presently claimed composition to achieve the surprising and unexpected results.

The applicants surprisingly discovered that the solid component's release time is more pronounced when the liquid phase has a viscosity of at least 100 MPa.s, thereby avoiding unnecessary hinderance of the release of the solid by optimizing the viscosity of the liquid. There is nothing in the prior art that would have suggested the synergy between solid dissolution and liquid viscosity. The skilled artisan would not be led to the presently claimed invention after reading Becks. The applicants respectfully submit that the surprising and unexpected synergy is rebuttal evidence of a *prima facie* case of obviousness.

II. REJECTION OF CLAIM 1 and 5-8 UNDER 35 U.S.C. §103(a) AS OBVIOUS OVER PFIEFFER ET AL.

The appellants respectfully submit that the Examiner erred in rejecting claims 1 and 5-8 under 35 U.S.C. §103(a) as obvious over Pfeiffer et al. (US 6,492,312).

A. The differences between the presently claimed invention and Pfeiffer are outside the level of ordinary skill the art

Pfeiffer teaches multiple particles distributed throughout the liquid, whereas the presently claimed invention is directed to only one solid floating on the outer surface of the liquid. The Examiner has cited page 1, lines 7-10 of Pfeiffer to support the contention that Pfeiffer teaches a single particle. The applicants acknowledge that

Pfeiffer mentions "a discrete particle" in the lines cited, however, the applicants respectfully submit that this usage is not intended to be in the singular, as Pfeiffer describes "discrete particles" throughout the specification. Moreover, Pfeiffer states that the size of the particles' diameter from about "100 to 5000 microns, and the discrete particles and gel being in a particle to gel weight ratio of from about 0.005 to 0.4 to 1". (col. 2, lines 62-65). A single particle within this size range would not fall within the required weight ratio, and would have a negligible intended effect. A skilled artisan would therefore understand Pfeiffer's composition to require multiple particles, rather than a single particle.

The present invention demonstrates advancement in the art because a solid in a package has lower density than one having a higher density in that the lower density solid is released in 2 minutes but it takes 4.5 minutes for a higher density solid to release in the wash liquor. (See, specification at page 27, line 12 to page 29, line 12 (¶¶ 0099-0107 in the published application US 2005/0153861.))

The situation in Pfeiffer having particles distributed throughout the liquid is the same as that discussed in the specification which results in delayed release of the solid, however, as addressed in the specification the present invention having one solid on the outer surface of the liquid is significantly different in that it alleviates the hindrance of solid release that characterizes compositions like those of Pfeiffer. As such, based on these significant differences between the level of art established by Pfeiffer and the present invention, as set forth in the amended claims, the present invention is not obvious over Pfeiffer.

A packaged detergent composition having one solid floating on the outer surface of the liquid would not have been predictable based on the disclosure of Pfeiffer. As discussed above, because the solid particles of Pfeiffer are distributed within the liquid the composition of Pfeiffer would experience the delayed release of the solid. There is no indication within Pfeiffer that the release of the solid particles disclosed therein can be affected by the density of the solid and the location of the solid particles within the liquid. Thus, based on this disclosure of Pfeiffer, one skilled in the art, at the time of the invention, could not predict that including one solid in the liquid composition with a density such that it floats on the outer surface of the liquid would favorably decrease the release time of the solid into the wash liquor. The examples mentioned above demonstrate this. The claims have been amended to recite that the packaged detergent composition has only one solid which floats on the outer surface of the liquid. Hence, the present invention is not obvious over Pfeiffer.

**III. REJECTION OF CLAIM 8 UNDER 35 U.S.C. §103(a) AS OBVIOUS
OVER PFEIFFER ET AL. IN VIEW OF DASQUE ET AL.**

Claim 9 is dependent from claim 1 in that it applies the detergent composition of claim 1 in a method for washing laundry. As discussed above, the detergent composition of claim 1 having one solid which solid floats on the outer surface of the liquid and resolves the problem in the art related to delayed release of solids from a liquid in the wash liquor is not obvious over Pfeiffer. As such, a method of washing laundry recited in claim 9 comprising the steps of providing this novel and unique

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detergent composition and releasing the detergent composition in a laundry washing machine is not obvious over Pfeiffer in view of Dasque.

(8) CONCLUSION

In view of the foregoing, Appellants respectfully request that the Honorable Board reverse the final rejection.

Respectfully submitted,

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(9) CLAIMS APPENDIX

1. (previously presented) A packaged detergent composition comprising a container that at least partly disintegrates in an aqueous environment, the detergent composition consisting of at least one liquid having an outer surface and one solid substantially insoluble in the liquid and having a size sufficient to be retained by a 2.5 mm meshing characterized in that the one solid is selected from the group consisting of enzymes, bleach, bleach activators and non-ionic surfactants, and has a density lower than the density of the liquid wherein the one solid is floating on the outer surface of at least one liquid, wherein the liquid has a dispersion/dissolution time of more than 30 s and a viscosity of at least 100 mPa/s.
2. (cancelled)
3. (cancelled)
4. (cancelled)
5. (previously presented) A packaged detergent composition according to claim 1 wherein the container is a sachet.
6. (previously presented) A packaged detergent composition according to claim 1 wherein the container is essentially water-soluble.
7. (previously presented) A packaged detergent composition according to claim 5, wherein the container comprises polyvinyl alcohol.
8. (previously presented) A method of washing dishes comprising providing the packaged detergent composition according to claim 1 and releasing the detergent composition in an automatic dishwashing machine.

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9. (previously presented) A method of washing laundry comprising providing the packaged detergent composition according to claim 1 and releasing the detergent composition in a laundry washing machine.

10. (cancelled)

11. (cancelled)

12. (cancelled)

13. (cancelled)

14. (cancelled)

15. (previously presented) The composition of Claim 1 wherein the one solid floating on the outer surface of the liquid has a constant overall diameter of 11 mm.

(10) EVIDENCE APPENDIX

None.

(11) RELATED PROCEEDINGS APPENDIX

None.